

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Examiner: Bruce D. HISSONG
Austin L. GURNEY) Art Unit: 1646
Patent No. 7,510,709) Attorney's Docket No. GNE-0125
Issued: March 31, 2009) Customer No. **35489**
For: **METHOD OF TREATING**)
INFLAMMATORY DISEASE BY INHIBITION)
OF IL-17 PRODUCTION)

FILED VIA EFS
ON JUNE 1, 2009

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

MAIL STOP: OFFICE OF PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) ("Determination") on the Issue Notification for United States ("U.S.") Patent No. 7,510,709, states that the Patent Term Adjustment ("PTA") is 540 days. Applicants hereby notify the United States Patent and Trademark Office ("USPTO") that the PTA cited under the Determination is believed to be in error, and request that the PTA accorded to the above-referenced patent be 735 days.

REMARKS

Patent Term Adjustment

The total PTA was noted as 540 days under the *Determination* on the Issue Notification for U.S. Patent No. 7,510,709.

Under the opinion entered on September 30, 2008 in *Wyeth vs. Dudas* (Civil Action No. 07-1492) ("*Wyeth*"), the U.S. District Court granted summary judgment to *Wyeth* concluding that the periods of time accorded under 35 U.S.C. 154(b)(1)(A) and under 35 U.S.C. 154(b)(1)(B) only "overlap" if they occur on the same day.

In reviewing the PTA History for Patent No. 7,510,709 as published in the PAIR system of the USPTO, Applicants note that the Three Year Date, which begins the time period under 35 U.S.C. 154(b)(1)(B), is October 29, 2006. Applicants further note that the time period under 35 U.S.C. 154(b)(1)(B) ends with the filing of a Request for Continued Examination on October 30, 2007. Applicants have further determined that there is an "overlap" of 171 days of time accumulated under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) for the period from December 09, 2006 to May 29, 2007. Applicants conclude that there are 195 days of additional PTA in accordance with *Wyeth*.

Thus, in accordance with the summary judgment under *Wyeth*, Applicants should be accorded 195 days (10/29/2006 to 10/30/2007) less the overlap of 171 days (12/09/2006 to 05/29/2007) of additional USPTO Three Year Delay.

The Total USPTO Delay should be corrected to 853 days.

The Total Applicants' Delay equals 118 days

Thus, the Total PTA is 735 days in favor of Applicants.

The Applicants request that the USPTO recalculate the PTA in view of the above remarks, and accord Applicants 735 days of PTA.

CONCLUSION

Applicants request that the PTA for U.S. Patent No. 7,510,709 be corrected to 735 instead of the 540 days indicated on the *Determination*.

Applicants hereby authorize payment from Deposit Account No. 50-4634 (referencing Attorney's Docket No. GNE-0125 for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e). However, Applicants do not believe the \$200.00 charge for reconsideration of the PTA should be charged to the Applicants, as Applicants believe that no error was made on the part of the Applicants. Please deposit any refund, or, if applicable, charge any additional fees that may be due in connection with this application, to the afore-mentioned Deposit Account. Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,

By:



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Date: June 1, 2009

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